

State agency has determined priority. The grant will consist of the grant agreement resulting from the basic application and grant amendments awarded for subsequent related projects.

(f) Generally, grant assistance for projects involving step 2 or 3 will not be awarded unless the Regional Administrator first determines that the facilities planning requirements of §§35.917 to 35.917-9 of this subpart have been met. Facilities planning may not be initiated prior to approval of a step 1 grant or written approval of a “plan of study” accompanied by a reservation of funds (see §35.925-18 and definition of “construction” in §35.905).

(g) If initiation of step 1, 2, or 3 construction (see definition of “construction” in §35.905) occurs before grant award, costs incurred before the approved date of initiation of construction will not be paid and award will not be made except under the circumstances in §35.925-18.

(h) The Regional Administrator may not award grant assistance unless the application meets the requirements of §35.920-3 and he has made the determinations required by §35.925 *et seq.*

(i) A grant or grant amendment awarded for a project under this subpart shall constitute a contractual obligation of the United States to pay the Federal share of allowable project costs up to the amount approved in the grant agreement (including amendments) in accordance with §35.930-6. However, this obligation is subject to the grantee’s compliance with the conditions of the grant (see §35.935 *et seq.*) and other applicable requirements of this subpart.

(j) Sections 35.937-10, 35.938-6 and 35.945 authorize prompt payment for project costs which have been incurred. The initial request for payment may cover the Federal share of allowable costs incurred before the award except as otherwise provided in §35.925-18. Before the award of such assistance, the applicant must claim in the application for grant assistance for that project all allowable costs incurred before initiation of project construction. An applicant may make no subsequent claim for payment for such costs. The estimated amount of any grant or

grant amendment, including any prior costs, must be established in conjunction with determination of priority for the project. The Regional Administrator must determine that the project costs are allowable under §35.940 *et seq.*

(k) Under section 204(b) of the Act, the grantee must comply with applicable user charge and industrial cost recovery requirements; see §§35.925-11, 35.928 *et seq.*, 35.929 *et seq.*, 35.935-13, 35.935-15, and appendix B to this subpart.

(l) The costs of sewage collection systems for new communities, new subdivisions, or newly developed urban areas should be included as part of the development costs of the new construction in these areas. Under section 211 of the Act, such costs will not be allowed under the construction grant program; see §35.925-13.

(m) The approval of a plan of study for step 1, a facilities plan, or award of grant assistance for step 1, step 2, or step 3, or any segment thereof, will not constitute a Federal commitment for grant assistance for any subsequent project.

(n) Where justified, a deviation from any substatutory requirement of this subpart may be granted under §30.1000 of this chapter.

(o) The Act requires EPA and the States to provide for, encourage and assist public participation in the Construction Grants Program. This requirement for public participation applies to the development of the State water pollution control strategy, the State project priority system, and the State project priority list, under §35.915; to the development of user charge and industrial cost recovery systems, under §§35.925.11, 35.928, and 35.929; and to the delegation of administrative responsibilities for the Construction Grants Program under subpart F of this chapter.

(p) Requirements regarding the award and administration of subagreements are set forth in §§35.935 through 35.939.

[43 FR 44049, Sept. 27, 1978, as amended at 44 FR 10302, Feb. 16, 1979]

#### §35.905 Definitions.

As used in this subpart, the following words and terms mean:

## Environmental Protection Agency

## § 35.905

*Act.* The Clean Water Act (33 U.S.C. 1251 *et seq.*, as amended).

*Ad valorem tax.* A tax based upon the value of real property.

*Combined sewer.* A sewer intended to serve as a sanitary sewer and a storm sewer, or as an industrial sewer and a storm sewer.

*Complete waste treatment system.* A complete waste treatment system consists of all the treatment works necessary to meet the requirements of title III of the Act, involved in: (a) The transport of waste waters from individual homes or buildings to a plant or facility where treatment of the waste water is accomplished; (b) the treatment of the waste waters to remove pollutants; and (c) the ultimate disposal, including recycling or reuse, of the treated waste waters and residues which result from the treatment process. One complete waste treatment system would, normally, include one treatment plant or facility, but also includes two or more connected or integrated treatment plants or facilities.

*Construction.* Any one or more of the following: Preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items. The phrase *initiation of construction*, as used in this subpart means with reference to a project for:

(a) *Step 1:* The approval of a plan of study (see §§ 35.920-3(a)(1) and 35.925-18(a));

(b) *Step 2:* The award of a step 2 grant;

(c) *Step 3:* Issuance of a notice to proceed under a construction contract for any segment of step 3 project work or, if notice to proceed is not required, execution of the construction contract.

*Enforceable requirements of the Act.* Those conditions or limitations of section 402 or 404 permits which, if violated, could result in the issuance of a compliance order or initiation of a civil or criminal action under section 309 of the Act. If a permit has not been

issued, the term shall include any requirement which, in the Regional Administrator's judgment, would be included in the permit when issued. Where no permit applies, the term shall include any requirement which the Regional Administrator determines is necessary to meet applicable criteria for best practicable waste treatment technology (BPWTT).

*Excessive infiltration/inflow.* The quantities of infiltration/inflow which can be economically eliminated from a sewerage system by rehabilitation, as determined in a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow, subject to the provisions in § 35.927.

*Industrial cost recovery.* (a) The grantee's recovery from the industrial users of a treatment works of the grant amount allocable to the treatment of waste from such users under section 204(b) of the Act and this subpart.

(b) The grantee's recovery from the commercial users of an individual system of the grant amount allocable to the treatment of waste from such users under section 201(h) of the Act and this subpart.

*Industrial cost recovery period.* That period during which the grant amount allocable to the treatment of wastes from industrial users is recovered from the industrial users of such works.

*Industrial user.* (a) Any nongovernmental, nonresidential user of a publicly owned treatment works which discharges more than the equivalent of 25,000 gallons per day (gpd) of sanitary wastes and which is identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented under one of the following divisions:

*Division A.* Agriculture, Forestry, and Fishing.

*Division B.* Mining.

*Division D.* Manufacturing.

*Division E.* Transportation, Communications, Electric, Gas, and Sanitary Services.

*Division I.* Services.

(1) In determining the amount of a user's discharge for purposes of industrial cost recovery, the grantee may

exclude domestic wastes or discharges from sanitary conveniences.

(2) After applying the sanitary waste exclusion in paragraph (b)(1) of this section (if the grantee chooses to do so), dischargers in the above divisions that have a volume exceeding 25,000 gpd or the weight of biochemical oxygen demand (BOD) or suspended solids (SS) equivalent to that weight found in 25,000 gpd of sanitary waste are considered industrial users. Sanitary wastes, for purposes of this calculation of equivalency, are the wastes discharged from residential users. The grantee, with the Regional Administrator's approval, shall define the strength of the residential discharges in terms of parameters including, as a minimum, BOD and SS per volume of flow.

(b) Any nongovernmental user of a publicly owned treatment works which discharges waste water to the treatment works which contains toxic pollutants or poisonous solids, liquids, or gases in sufficient quantity either singly or by interaction with other wastes, to contaminate the sludge of any municipal systems, or to injure or to interfere with any sewage treatment process, or which constitutes a hazard to humans or animals, creates a public nuisance, or creates any hazard in or has an adverse effect on the waters receiving any discharge from the treatment works.

(c) All commercial users of an individual system constructed with grant assistance under section 201(h) of the Act and this subpart. (See § 35.918(a)(3).)

**Infiltration.** Water other than waste water that enters a sewerage system (including sewer service connections) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

**Infiltration/inflow.** The total quantity of water from both infiltration and inflow without distinguishing the source.

**Inflow.** Water other than waste water that enters a sewerage system (including sewer service connections) from sources such as roof leaders, cellar drains, yard drains, area drains, foundation drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and

sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

**Interceptor sewer.** A sewer whose primary purpose is to transport waste waters from collector sewers to a treatment facility.

**Interstate agency.** An agency of two or more States established under an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of water pollution.

**Municipality.** A city, town, borough, county, parish, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created under State law, or an Indian tribe or an authorized Indian tribal organization, having jurisdiction over disposal of sewage, industrial wastes, or other waste, or a designated and approved management agency under section 208 of the Act.

(a) This definition includes a special district created under State law such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity or an integrated waste management facility, as defined in section 201(e) of the Act, which has as one of its principal responsibilities the treatment, transport, or disposal of liquid wastes of the general public in a particular geographic area.

(b) This definition excludes the following:

(1) Any revenue producing entity which has as its principal responsibility an activity other than providing waste water treatment services to the general public, such as an airport, turnpike, port facility, or other municipal utility.

(2) Any special district (such as school district or a park district) which has the responsibility to provide waste water treatment services in support of its principal activity at specific facilities, unless the special district has the responsibility under State law to provide waste water treatment services to the community surrounding the special district's facility and no other municipality, with concurrent jurisdiction to

## Environmental Protection Agency

## § 35.905

serve the community, serves or intends to serve the special district's facility or the surrounding community.

*Operable treatment works.* An operable treatment works is a treatment works that:

(a) Upon completion of construction will treat waste water, transport waste water to or from treatment, or transport and dispose of waste water in a manner which will significantly improve an objectionable water quality situation or health hazard, and

(b) Is a component part of a complete waste treatment system which, upon completion of construction for the complete waste treatment system (or completion of construction of other treatment works in the system in accordance with a schedule approved by the Regional Administrator) will comply with all applicable statutory and regulatory requirements.

*Project.* The scope of work for which a grant or grant amendment is awarded under this subpart. The scope of work is defined as step 1, step 2, or step 3 of treatment works construction or segments (see definition of *treatment works segment* and § 35.930-4).

*Replacement.* Expenditures for obtaining and installing equipment, accessories, or appurtenances which are necessary during the useful life of the treatment works to maintain the capacity and performance for which such works were designed and constructed. The term *operation and maintenance* includes replacement.

*Sanitary sewer.* A sewer intended to carry only sanitary or sanitary and industrial waste waters from residences, commercial buildings, industrial plants, and institutions.

*Sewage collection system.* For the purpose of § 35.925-13, each, and all, of the common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive waste waters directly from facilities which convey waste water from individual structures or from private property, and which include service connection "Y" fittings designed for connection with those facilities. The facilities which convey waste water from individual structures, from private property to the public lateral sewer, or its equivalent, are specifically excluded

from the definition, with the exception of pumping units, and pressurized lines, for individual structures or groups of structures when such units are cost effective and are owned and maintained by the grantee.

*State.* A State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Marianas.

*State agency.* The State water pollution control agency designated by the Governor having responsibility for enforcing State laws relating to the abatement of pollution.

*Storm sewer.* A sewer intended to carry only storm waters, surface runoff, street wash waters, and drainage.

*Treatment works.* Any devices and systems for the storage, treatment, recycling, and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes used to implement section 201 of the Act, or necessary to recycle or reuse water at the most economical cost over the useful life of the works. These include intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power, and other equipment and their appurtenances; extensions, improvement, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment (including land for composting sludge, temporary storage of such compost, and land used for the storage of treated waste water in land treatment systems before land application); or any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined storm water and sanitary sewer systems.

*Treatment works segment.* A treatment works segment may be any portion of an operable treatment works described in an approved facilities plan, under § 35.917, which can be identified as a

contract or discrete subitem or sub-contract for step 1, 2, or 3 work. Completion of construction of a treatment works segment may, but need not, result in an operable treatment works.

*Useful life.* Estimated period during which a treatment works will be operated.

*User charge.* A charge levied on users of a treatment works, or that portion of the ad valorem taxes paid by a user, for the user's proportionate share of the cost of operation and maintenance (including replacement) of such works under sections 204(b)(1)(A) and 201(h)(2) of the Act and this subpart.

*Value engineering (VE).* A specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.

**§ 35.907 Municipal pretreatment program.**

(a) The Regional Administrator is authorized to provide grant assistance for the development of an approvable municipal pretreatment program as required by part 403 of this chapter in conjunction with a step 1, step 2, or step 3 project.

(b) The grantee is required to develop a pretreatment program if the Regional Administrator determines that:

(1) The municipal treatment works:

(i) Serves industries subject to proposed or promulgated pretreatment standards under section 307(b) of the Act, or

(ii) Expects to serve industries connecting into the works in accordance with section 301(i)(2), where these industries are subject to the section 307 (b) or (c) standards; and

(2) A work plan under a section 208 planning grant has not provided for the development of a program approvable under part 403 of this chapter.

(c) A pretreatment program may be required for municipal treatment works which receive other nondomestic wastes covered by guidance issued under section 304(g) of the Act.

(d) Development of an approvable municipal pretreatment program under part 403 of this chapter shall include:

(1) An industrial survey as required by § 403.8 of this chapter including identification of system users, the character and volume of pollutants discharged, type of industry, location (see paragraph (f) of this section);

(2) An evaluation of legal authority, including adequacy of enabling legislation, and selection of mechanisms to be used for control and enforcement (e.g., ordinance, joint powers agreement, contract);

(3) An evaluation of financial programs and revenue sources to insure adequate funding to carry out the pretreatment program;

(4) A determination of technical information necessary to support development of an industrial waste ordinance or other means of enforcing pretreatment standards;

(5) Design of a monitoring enforcement program;

(6) A determination of pollutant removals in existing treatment works;

(7) A determination of the treatment works tolerance to pollutants which interfere with its operation, sludge use, or disposal;

(8) A determination of required monitoring equipment for the municipal treatment works;

(9) A determination of municipal facilities to be constructed for monitoring or analysis of industrial waste.

(e) Items (d) (6) and (7) of this section are grant eligible if necessary for the proper design or operation of the municipal treatment works but are not grant eligible when performed solely for the purpose of seeking an allowance for removal of pollutants under § 403.7 of this chapter.

(f) Information concerning the character and volume of pollutants discharged by industry to a municipal treatment works is to be provided to the municipality by the industrial discharger under paragraph (d)(1) of this section. However, the costs of a limited amount of end-of-pipe sampling and associated analysis of industrial discharges to a municipal treatment works properly allocable to the municipality are allowable if the grantee obtains the prior written approval of the Regional Administrator; see § 35.940–3(f).